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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 LUIS URENDA-BUSTOS,

8 Plaintiff(s),

Case No. 2:16-CV-2165 JCM (NJK)

ORDER

9 v.

10 BRIAN WILLIAMS, SR., et al.,

11 Defendant(s).

12  
13 Presently before the court is defendants Ira Hollingsworth and Bryan Wilson's  
14 (collectively, "defendants") motion for summary judgment. (ECF No. 17). Plaintiff Luis Urenda-  
15 Bustos filed a response. (ECF No. 23). Defendants have not replied, and the time for doing so  
16 has since passed.

17 Also before the court is defendants' motion to strike. (ECF No. 24). Plaintiff has not  
18 responded, and the time for doing so has since passed.

19 **I. Facts**

20 Plaintiff alleges that on September 18, 2013, defendant Foley,<sup>1</sup> a senior correctional officer  
21 at Southern Desert Correctional Center ("SDCC"), forcibly put hand restraints on plaintiff that cut  
22 off the circulation to plaintiff's hands. (ECF No. 4). Plaintiff alleges that the restraints left  
23 indentations and subdermal hematoma bruising on plaintiff's wrist. *Id.*

24 Plaintiff brought the injuries to the attention of defendant Hollingsworth, a caseworker at  
25 SDCC. (ECF No. 4). Defendant Hollingsworth sent plaintiff to see a nurse for medical attention.

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27  
28 <sup>1</sup> Foley is a named defendant in plaintiff's complaint and remains a defendant after the  
screening. (ECF No. 4 & 5). However defendant Foley is not actively involved in this motion  
for summary judgment.

1 *Id.* Plaintiff asserts that defendant Hollingsworth did not report plaintiff's injury, as required by  
2 administrative regulations, in an attempt to cover up Foley's actions. *Id.*

3 Plaintiff began the informal grievance process. (ECF No. 4). Plaintiff submitted numerous  
4 informal grievances, the last of which was rejected on March 17, 2015. (ECF No. 17).

5 Foley issued plaintiff a notice of charges of a disciplinary violation due to the nurse's  
6 statement that plaintiff's injuries were "self-inflicted." (ECF No. 4). On October 1, 2013, a  
7 disciplinary hearing was held regarding the charges Officer Foley brought against plaintiff. (ECF  
8 No. 17). Defendant Wilson, a Sergeant at SDCC, adjudicated the disciplinary hearing. (ECF No.  
9 4). Wilson found plaintiff guilty of the charges and reduced plaintiff's custody level. *Id.*

10 Pursuant to a screening order (ECF No. 4), in relevant part, plaintiff was permitted to  
11 proceed on one count of retaliation against defendants Foley, Hollingsworth, Wilson, and  
12 unidentified medical staff. (ECF No. 17).

## 13 **II. Legal Standard**

14 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,  
15 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
16 show that "there is no genuine dispute as to any material fact and the movant is entitled to a  
17 judgment as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is  
18 "to isolate and dispose of factually unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317,  
19 323–24 (1986).

20 For purposes of summary judgment, disputed factual issues should be construed in favor  
21 of the nonmoving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to  
22 withstand summary judgment, the nonmoving party must "set forth specific facts showing that  
23 there is a genuine issue for trial." *Id.*

24 In determining summary judgment, a court applies a burden-shifting analysis. "When the  
25 party moving for summary judgment would bear the burden of proof at trial, it must come forward  
26 with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at  
27 trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine  
28

1 issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests.,*  
2 *Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

3 By contrast, when the nonmoving party bears the burden of proving the claim or defense,  
4 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential  
5 element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed  
6 to make a showing sufficient to establish an element essential to that party’s case on which that  
7 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving  
8 party fails to meet its initial burden, summary judgment must be denied and the court need not  
9 consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–  
10 60 (1970).

11 If the moving party satisfies its initial burden, the burden then shifts to the opposing party  
12 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*  
13 *Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party need not establish a dispute of material  
14 fact conclusively in its favor. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
15 626, 631 (9th Cir. 1987). It is sufficient that “the claimed factual dispute be shown to require a  
16 jury or judge to resolve the parties’ differing versions of the truth at trial.” *Id.*

17 In other words, the nonmoving party cannot avoid summary judgment by relying solely on  
18 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,  
19 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the  
20 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue  
21 for trial. *See Celotex*, 477 U.S. at 324.

22 At summary judgment, a court’s function is not to weigh the evidence and determine the  
23 truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby,*  
24 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all  
25 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the  
26 nonmoving party is merely colorable or is not significantly probative, summary judgment may be  
27 granted. *See id.* at 249–50.

### 28 **III. Discussion**

1 Defendants Hollingsworth and Wilson move to strike plaintiff's response to defendants'  
2 motion to dismiss as untimely and unauthorized. (ECF No. 23).

3 Defendants also move for summary judgment as to plaintiff's retaliation claim against them.  
4 *Id.* They assert that the court should grant the motion on the basis of lack of personal participation  
5 and/or qualified immunity. *Id.*

6 *a. Motion to strike*

7 District courts have inherent power to control their own dockets. *Ready Transp., Inc. v.*  
8 *AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010). Further, district courts have "broad discretion  
9 in supervising the pretrial phase of litigation." *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087  
10 (9th Cir. 2002).

11 Defendants assert that plaintiff's response to defendants' summary judgment motion is  
12 untimely and unauthorized, and that the court should strike the response. (ECF No. 24).  
13 Defendants also argue that because this court denied plaintiff's extension request and because  
14 plaintiff failed to obtain permission to file the response, the court should now strike plaintiff's  
15 response. *Id.*

16 Here, the court declines to strike plaintiff's response to defendants' motion. Consideration  
17 of plaintiff's response in this case promotes the public policy favoring disposition of motions on  
18 their merits.

19 *b. Defendant Hollingsworth*

20 Defendants assert that summary judgement should be granted as to the retaliation  
21 claims against Hollingsworth because he did not personally participate in the alleged  
22 violations. (ECF No. 17). Plaintiff asserts that the level of participation of Hollingsworth  
23 is a disputed material fact that should be left to a jury. (ECF No. 23).

24 Within the prison context, a viable claim of First Amendment retaliation entails five  
25 basic elements: (1) An assertion that a state actor took some adverse action against  
26 an inmate (2) because of (3) that prisoner's protected conduct, and that such action  
27 did not reasonably advance a legitimate correctional goal.

28 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)

1 Defendants assert that evidence establishes that Hollingsworth was not the employee who  
2 brought charges against plaintiff for self-inflicted injuries. (ECF No. 17). Defendants also assert  
3 that Hollingsworth arranged for plaintiff to be escorted to the infirmary after plaintiff showed him  
4 the marks on his wrists. *Id.*

5 Plaintiff asserts that Hollingsworth violated his rights by not reporting defendant Foley's  
6 alleged act of abuse as required by the Nevada Department of Corrections Administrative  
7 Regulation 339.04 after plaintiff informed Hollingsworth of Foley's conduct. (ECF Nos. 4 & 5).

8 Here, there is no genuine dispute of material fact. The only remaining cause of action  
9 against Hollingsworth is retaliation in violation of plaintiff's First Amendment right to file prison  
10 grievances and to pursue civil rights litigation in the courts. (ECF No. 4). Plaintiff makes no  
11 allegations against Hollingsworth that would support the essential elements of retaliation. The  
12 only allegation of wrongdoing plaintiff makes against Hollingsworth is that Hollingsworth did not  
13 report the alleged abuse as required by administrative regulations. (ECF Nos. 4 & 5). However,  
14 that alleged conduct occurred before plaintiff exercised his First Amendment right to file a  
15 grievance. Plaintiff has not alleged facts that would demonstrate that Hollingsworth's actions in  
16 failing to report the alleged abuse "chilled" plaintiff's exercise of his First Amendment rights.  
17 Therefore, plaintiff has not alleged facts that, if taken as true, would meet essential elements of the  
18 cause of action.

19 The court will grant summary judgment for Hollingsworth on plaintiff's retaliation claim.

20 *c. Defendant Wilson*

21 Defendants assert that Wilson is entitled to summary judgment on the basis of qualified  
22 immunity and/or for lack of personal participation in the alleged violation. (ECF No. 17). Plaintiff  
23 asserts that Wilson's level of participation is a disputed material fact that should be left to a jury.  
24 (ECF No. 23).

25 *i. Qualified immunity*

26 When a plaintiff brings a claim under 42 U.S.C. § 1983, government officials sued in their  
27 individual capacities may raise the affirmative defense of qualified immunity. *See, e.g., Spoklie v.*  
28 *Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005); *Goodman v. Las Vegas Metro. Police Dep't*, 963

1 F. Supp. 2d 1036, 1058 (D. Nev. 2013). Qualified immunity protects law enforcement officials  
2 “from liability for civil damages insofar as their conduct does not violate clearly established  
3 statutory or constitutional rights of which a reasonable person would have known.” *Harlow v.*  
4 *Fitzgerald*, 457 U.S. 800, 818 (1982).

5 “Qualified immunity balances two important interests—the need to hold public officials  
6 accountable when they exercise power irresponsibly, and the need to shield officials from  
7 harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v.*  
8 *Callahan*, 555 U.S. 223, 231 (2009). “The principles of qualified immunity shield an officer from  
9 personal liability when an officer reasonably believes that his or her conduct complies with the  
10 law.” *Id.* at 244. It allows for officials to make reasonable mistakes regarding the lawfulness of  
11 their conduct by excusing reasonable mistakes. *See id.* at 231.

12 Deciding whether an officer is entitled to qualified immunity is a two-prong inquiry. First,  
13 the court assesses whether the plaintiff has alleged or shown a violation of a constitutional right.  
14 *Id.* at 232. Second, the court decides whether the right at issue was clearly established at the time  
15 of the defendant’s alleged misconduct. *Id.*

16 “The ‘reasonableness’ of a particular use of force must be judged from the perspective of  
17 a reasonable officer in the scene, rather than with the 20/20 vision of hindsight.” *Graham v.*  
18 *Connor*, 490 U.S. 386, 396 (1989).

19 The Supreme Court has instructed that district judges may use their discretion in deciding  
20 which qualified immunity prong to address first based on the circumstances of the case at issue.  
21 *See Pearson*, 555 U.S. at 236. Accordingly, the court will turn first to the second prong of the  
22 qualified immunity test to determine whether the constitutional right plaintiff claims defendants  
23 violated was “clearly established.”

24 “[T]he right the official is alleged to have violated must have been ‘clearly established’ in  
25 a more particularized, and hence more relevant, sense: [t]he contours of the right must be  
26 sufficiently clear that a reasonable official would understand that what he is doing violates that  
27 right.” *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Anderson v. Creighton*, 483 U.S. 635,  
28

1 640 (1987)). Thus, the dispositive question is “whether it would be clear to a reasonable officer  
2 that his conduct was unlawful in the situation he confronted.” *Id.*

3 Defendants argue that qualified immunity should apply to Wilson’s disciplinary hearing  
4 decision because he was acting in his capacity as a disciplinary hearing officer and made the  
5 decision based on staff reports, plaintiff’s statement, the statements of witnesses, and other  
6 evidence. (ECF No. 17). Defendants also assert that nothing about Wilson’s conduct in his  
7 decision as a hearing officer “suggests that it would have been obvious to a reasonable prison  
8 employee that adjudicating the charge would violate [p]laintiff’s constitutional rights.” *Id.*

9 Plaintiff asserts that local governments and their agencies are not protected by the  
10 immunities of the Eleventh Amendment. (ECF No. 23). Plaintiff also argues that immunities do  
11 not apply to prison officials acting in their official capacities. *Id.*

12 Plaintiff cites to *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978), to support his claim  
13 that local governments and their agencies are not protected by the immunities of the Eleventh  
14 Amendment. (ECF No. 23). Plaintiff appears to be asserting that the court in *Monell* held that  
15 these immunities should not apply to defendants here. However, the reference to the application  
16 of § 1983 made in *Monell* to “municipalities and other local government units” was referring to  
17 city and county government units and officials. *Monell*, 436 U.S. at 690. SDCC is a state prison.  
18 Therefore, the holding in *Monell* is inapplicable to this case. *See id.*

19 Plaintiff cites to *Hafer v. Melo*, 502 U.S. 21 (1991), to support his assertion that immunities  
20 do not apply to prison officials acting in their official capacities. (ECF No. 23). However, *Hafer*  
21 does not speak to which immunities apply to prison officials. *See generally Hafer*, 502 U.S. 21.

22 Plaintiff has not made assertions that it would be clear to a reasonable officer in Wilson’s  
23 position that adjudicating the charge would violate plaintiff’s constitutional rights. Therefore, the  
24 court holds that qualified immunity bars plaintiff’s claim against Wilson. *Harlow*, 457 U.S. at  
25 818.

26 *ii. Lack of personal participation*

27 Defendants argue that it was Foley, not Wilson, who charged plaintiff with the violation  
28 and that summary judgment should be granted because defendant Wilson did not personally

1 participate in the alleged constitutional violation. (ECF No. 17). Plaintiff's only response to this  
2 challenge is that defendant's level of participation is a matter of disputed material fact that is best  
3 left to a jury. (ECF No. 23).

4 Plaintiff has not presented any issues of material fact that are disputed here. Both parties  
5 assert that defendant Wilson's relevant participation was his role in adjudicating the charge in the  
6 disciplinary hearing. (ECF Nos. 4, 17, 23).

7 Because the court finds that Wilson is entitled to qualified immunity and because the court  
8 finds that plaintiff has failed to assert sufficient facts in regards to Wilson's conduct and its  
9 connection to the alleged violation of plaintiff's First Amendment rights, the court will grant  
10 summary judgment in favor of defendant Wilson.

#### 11 **IV. Conclusion**

12 As defendants are entitled to summary judgment on the basis of qualified immunity and/or  
13 lack of personal participation, the court will not address defendants' alternative arguments  
14 regarding the timeliness of plaintiff's complaint and whether plaintiff has exhausted administrative  
15 remedies.

16 In sum, the court will grant summary judgment as to the retaliation claim against defendant  
17 Hollingsworth. The court finds that defendant Wilson is entitled to qualified immunity and grants  
18 summary judgment as to the retaliation claim against him.

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion for  
21 summary judgment (ECF No. 17) be, and the same hereby, is GRANTED.

22 IT IS FURTHER ORDERED that defendants' motion to strike (ECF No. 24) be, and the  
23 same hereby is, DENIED.

24 DATED February 28, 2018.

25   
26 UNITED STATES DISTRICT JUDGE